

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

Criminal No. 05-1849 JH

DAKOTA FITZNER,

Defendant.

**UNOPPOSED MOTION TO MODIFY OR AMEND
MAY 1, 2006 ORDER SETTING CONDITIONS OF RELEASE AND
JULY 24, 2007 ORDER AMENDING CONDITIONS OF RELEASE**

The Defendant, DAKOTA FITZNER, by and through his attorney, Todd Hotchkiss of Frechette & Associates, P.C., hereby moves this Court, without opposition, to modify or amend the May 1, 2006 Order Setting Conditions of Release (Doc.445) and the July 24, 2007 Order Amending Conditions of Release (Doc.1043) to order the removal of the conditions that MR. FITZNER be subject to electronic monitoring and to sobriety monitoring as ordered on July 24, 2007.

As grounds, defense counsel states as follows:

1. MR. FITZNER was released on conditions pursuant to the May 1, 2006 Order Setting Conditions of Release. (Doc.445)

2. On July 24, 2007, this Court amended the Order Setting Conditions of Release to order that MR. FITZNER be subject to electronic monitoring/sobriety under the home detention component" and that "all other previously imposed conditions of release will

remain unchanged."

3. Since July 24, 2007, MR. FITZNER has requisitely been subject to electronic monitoring and use of a sobrieter.

4. Undersigned counsel understands that MR. FITZNER has been engaged in good and compliant conduct while released.

5. Under these circumstances, MR. FITZNER requests that his conditions of release be modified and amended, as established in the May 1, 2006 Order Setting Conditions of Release and the July 24, 2007 Order Amending Conditions of Release, to remove the conditions that MR. FITZNER be subject to electronic monitoring and to sobrieter monitoring.

6. MR. FITZNER understands that all other previously imposed conditions of release will remain unchanged.

7. MR. FITZNER understands that if he fails to comply with the terms and conditions of his release, his release can be revoked and he would then immediately be taken into custody pending sentencing in this matter. MR. FITZNER also understands that he could be charged with additional crimes if he violates his conditions of release, depending on the nature of any violation.

8. On April 27, 2009, Assistant United States Attorney James R.W. Braun was contacted regarding this motion and Mr. Braun does not oppose this motion.

9. On April 27, 2009, counsel contacted U.S. Pretrial Services Officer Sandra Day, who does not oppose this motion.

WHEREFORE, the Defendant, DAKOTA FITZNER, respectfully

requests this Court to enter an order modifying or amending MR. FITZNER's conditions of release established in the May 1, 2006 Order Setting Conditions of Release and the July 24, 2007 Order Amending Conditions of Release by removing the conditions that MR. FITZNER be subject to electronic monitoring and sobriety monitoring as requested herein. MR. FITZNER also requests such other and further relief as this Court may deem just and proper.

Respectfully submitted,

/s/ Todd Hotchkiss
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CERTIFICATE OF SERVICE

I, Todd Hotchkiss, hereby certify that on April 28, 2009 I electronically filed the foregoing document through the CM/ECF system and that through that system opposing counsel James Braun, Assistant United States Attorney, will be served with a true and accurate copy.

/s/ Todd Hotchkiss
TODD HOTCHKISS